

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the operation of interruptible load programs offered by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company and the effect of these programs on energy prices, other demand responsiveness programs, and the reliability of the electric system.

Rulemaking 00-10-002
(Filed October 5, 2000)

**PHASE 2 SCOPING MEMO AND RULING OF
PRESIDING OFFICER AND ASSIGNED COMMISSIONER**

Pursuant to Article 2.5 of the Commission's Rules of Practice and Procedure (Rules), and the December 12, 2000 Scoping Memo and Ruling, this Phase 2 Scoping Memo and Ruling addresses: (1) issues, (2) need for hearing, (3) schedule, (4) final oral argument, and (5) electronic service.

1. Issues

As identified in both the Order Instituting Rulemaking (OIR) and the December 12, 2000 Scoping Memo and Ruling, the issues to be addressed in this proceeding are:

1. An examination of the role of customers on a utility's interruptible tariffs to ensure reliable and reasonably priced electric service within California.
2. Coordination of the variety of interruptible, curtailable and demand responsiveness programs being offered and proposed in California.
3. Identification of alternative means for customers to reduce their energy usage during periods of peak demand.

4. Revision and an update to the Commission's priorities for curtailing customers during times of energy shortages.

Phase 1 addressed these issues for Summer 2001. Phase 2 will address these matters for the period after Summer 2001.

The specific issues that will be addressed in Phase 2 are identified in Attachment A. These issues are developed from the OIR, Phase 1 proceedings, Phase 2 Prehearing Conference (PHC) Statements, the September 7, 2001 Phase 2 PHC, correspondence from the California Energy Commission (CEC) dated September 12, 2001, and a response from respondent utilities dated September 13, 2001.

Respondent utilities shall file and serve reports on hospitals less than 100 beds, and skilled nursing facilities, as ordered in Decision (D.) 01-04-006, and as identified in Attachment A. Respondent utilities shall file and serve proposals to implement priorities for customers experiencing extreme temperatures (Senate Bill 68, Pub. Util. Code Section 2772), including the presentation of expert medical opinion, a review of appropriate literature and research, and anything else necessary to reasonably implement this legislation. Further, respondent utilities shall file and serve proposals and comments on all issues. Other parties may file and serve proposals and comments on any or all issues.

Some issues merit a brief discussion. For example, the Commission has separately directed respondent utilities to conduct a workshop to develop a more complex Optional Binding Mandatory Curtailment (OBMC) circuit aggregation program for Commission consideration through a petition for modification by March 1, 2002. (D.01-06-087, Ordering Paragraph 3.) Further, the Commission invited parties to also address the 10-day baseline measurement issue for OBMC programs at that workshop. (D.01-06-087, mimeo., page 14.) Respondent utilities suggest that these issues be included in workshops conducted in Phase 2.

I agree. As a result, these issues are included in Attachment A, and should be considered in Phase 2 workshops. Absent Commission modification of D.01-06-087, however, the Commission-ordered procedure for consideration of these issues must be followed. That is, recommendations for program changes regarding these two issues must be presented through a petition for modification. While a petition for modification may be filed at any time, the schedule includes dates for a petition and responses that allow the matter to be considered within the Phase 2 decision.

Industrial customers¹ recommend that Phase 2 issues include whether or not Southern California Edison Company (SCE) has accurately determined the number of interruption events remaining under the Schedule I-6 program for 2001. This is a compliance issue, and should be raised in another forum (e.g., the filing of a complaint, wherein a complainant would allege that SCE is in violation of a provision of law, or an order or rule of the Commission). Moreover, a Phase 2 decision is not scheduled until early 2002. Industrial customers do not propose a decision on this issue before the end of 2001, but one would seemingly be necessary for the decision to have an effect on implementation of Schedule I-6 events during 2001. If the issue deserves Commission consideration, industrial customers may file a complaint or other pleading, and move for an expedited schedule or other expedited relief, to the extent necessary and reasonable.

The CEC recommends that Phase 2 presume some form of real time prices (RTP) are in effect during 2002. According to CEC, RTPs must be adopted by December 31, 2001 (Pub. Util. Code Section 353.3), and will be considered in the

¹ These are the California Manufacturers and Technology Association, California Industrial Users, California Large Energy Consumers Association, and Energy Producers and Users Coalition.

rate stabilization proceedings (A.00-11-038 et al., and A.00-11-045 et al.)

Respondent utilities point out that RTP proposals were submitted on August 17, 2001 in A.00-11-038 et al. Respondent utilities recommend that the Commission coordinate RTP issues so that the August 17, 2001 proposals can be acted upon in a time frame consistent with the schedule adopted in this proceeding. I encourage parties² to make recommendations in this proceeding that are consistent and compatible with recommendations made in A.00-11-038, so that the Commission may coordinate outcomes.

The CEC also recommends a review of several “high” or “global” level policy issues, such as the purpose of demand reduction (DR) programs, criteria for adopting the appropriate mix of DR programs, cost recovery issues, and others. By letter dated September 12, 2001, CEC recommends addressing issues at “micro” and “macro” levels by adding two additional phases. CEC proposes that Phase 2 be devoted to short-term program options and be completed by January 2002, Phase 3 be opened to consider long-term policy issues and be completed by December 2002, and Phase 4 be opened to address customer specific curtailment issues and be completed by August 2003.

I decline to adopt this recommendation. The proposed “global” issues go beyond the scope adopted by the Commission in the OIR. Further, both the OIR and the December 12, 2000 Scoping Memo contemplate that this proceeding will be completed by April 5, 2002. I seek to reach that goal.

Any person, however, may file a petition asking the Commission to consider adopting, amending, or repealing a regulation. (Pub. Util. Code Section

² Unless the word “respondent” is specifically used, “party” or “parties” is used here to mean all appearances, including respondents.

1708.5.) Nonetheless, I agree with concerns raised by respondent utilities, and ask persons to considering waiting until the final Phase 2 decision is issued before identifying additional issues, and filing a petition seeking consideration of a future proceeding.

The University of California and the California State University (UC/CSU) recommend ongoing consideration of essential customer status issues. In particular, UC/CSU identify potentially inconsistent treatment by respondent utilities and the Commission in the essential customer classification of police and fire services among various campuses, and other customers (e.g., State Center Community College District). I decline to add further review of essential customer status for police and fire customers. On the other hand, a police, fire, or other customer may file a complaint if the customer believes it has not been properly classified within an essential customer classification in violation of law or any order or rule of the Commission, or may file a pleading that seeks other appropriate relief.

Finally, parties and persons may use the workshops to discuss ideas and develop consensus. The Commission also encourages parties and persons to meet and confer in any other way that facilitates reasonable and timely resolution of issues. Proposals and comments must be presented through the process, pleadings and schedule adopted herein, however, to enable efficient and timely consideration of these matters by the Commission.

2. Need for Hearing

The Commission preliminarily determined that this rulemaking “is expected to require hearings.” (OIR, page 14; also see Rules 8(e) and (f).) The adopted Phase 1 schedule did not include formal hearing absent the filing and granting of a motion for hearing. Phase 1 was generally conducted without

formal hearing, with the exception of a limited hearing regarding essential customer treatment for hospitals.

Parties proposed Phase 2 schedules at the September 7, 2001 PHC that, similar to Phase 1, generally do not contemplate formal hearing, unless a motion for hearing is made and granted. Rather, absent the grant of a motion for hearing, parties propose that Phase 2 be conducted using proposals, workshops, comments, revised proposals, and reply comments. That schedule is adopted with limited clarifications noted herein.

Motions for hearing must be filed and served by the date shown in the adopted schedule. Motions shall identify the specific item for which hearing is sought (i.e., disputed fact or expert opinion in any filed and served document, such as a filed and served proposal, comment, reply comment). The motion shall also state a justification for hearing, what the moving party would seek to demonstrate through hearing, and whether any disputed fact or facts are “adjudicative facts” or “legislative facts” (Rule 8(f)). It shall also contain anything else necessary for the Commission to make an informed decision on the motion. Responses shall be filed and served by the date shown in the adopted schedule.

If motion for evidentiary hearing is made and granted, the party who offered the statement that is the subject of the evidentiary hearing shall produce a witness to testify in support of the statement, and be subject to cross-examination. Evidentiary hearing, if held, will occur as provided in the adopted schedule.

Thus, formal hearing will not be held in Phase 2 unless a motion is made and granted. Absent the grant of a motion for hearing, the Phase 2 record shall be composed of all filed and served documents, including proposals, comments,

revised proposals, and reply comments. Each party must file each such document that the party intends be part of the record.

3. Schedule

The Phase 2 schedule is shown in Attachment B, both without and with formal hearing.

Workshops will be conducted by Energy Division. Energy Division will file and serve an agenda a reasonable number of days before each workshop. The agenda will state the time and place for each workshop, and the order of matters to be addressed.

To the fullest extent possible, parties shall use the same outline for proposals, comments, revised proposals, reply comments, plus opening and reply briefs (if briefs are filed). Parties shall use their best efforts to agree on the outline(s). Parties shall bring any unresolved disputes regarding the outline(s) to the attention of the Administrative Law Judge (ALJ) sufficiently before documents are due to allow a reasonable opportunity for resolution.

The schedule includes less than 20 days before filing comments on the Phase 2 proposed decision. (Rule 77.2.) This schedule is based on the unopposed recommendation of parties at the Phase 2 PHC. It is understood that all parties stipulate to this reduced comment period. (Rule 77.7(g).) Any party who does not agree to this stipulation shall file and serve a motion for reconsideration of the schedule within seven days of today. Responses shall be filed and served within seven days of the service of any such motion.

Parties generally recommend more than 5 days for reply comments. (Rule 77.5.) This recommendation is not adopted, however.

The goal is to complete this proceeding by April 5, 2002 (18 months from its initiation). In no event, however, will resolution exceed 18 months from the date the investigation was filed, pursuant to Senate Bill 960, Section 13.

4. Final Oral Argument

A party in a quasi-legislative proceeding has the right to make a final oral argument before the Commission, if the final oral argument is requested within the time and manner specified in the Scoping Memo or later ruling. (Rule 8(d).) Parties shall use the same procedure that was used in Phase 1 for requesting final oral argument in Phase 2.

Specifically, any party seeking to present final oral argument shall file and serve a motion by the date stated in the attached schedule. Responses, if any, shall be filed and served by the date noted in the schedule.

The motion shall state the request, the amount of time requested, recommended procedure and order of presentations, and anything else relevant to the motion. The motion shall contain all information necessary for the Commission to make an informed ruling on the motion, providing for an efficient, fair, equitable, and reasonable final oral argument. If more than one party plans to move for final oral argument, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentations, and anything else relevant to the motion.

5. Electronic Service

Each person on the Phase 2 service list has an electronic mail address. As directed at the September 7, 2001 PHC, service of documents and pleadings in Phase 2 shall be by electronic mail, with limited exceptions. Service by electronic mail shall be accomplished by 5:00 p.m. on the date service is to be performed. Parties are directed to use the most current service list and electronic mail addresses from the Commission's web page for each service.³

³ There are many ways to accomplish tasks on the Commission's new web page. One method to obtain the most current service list is as follows: click on

Footnote continued on next page

Electronic service does not eliminate the Commission's requirements for filing. Documents that are to be filed must comply with Rule 2 of the Commission's Rules of Practice and Procedure (e.g., Rule 2.5 requires an original and four copies once the official service list is established).

Except as modified herein (e.g., access to electronic mail addresses on the Commission's new web page, service of paper copies), parties shall continue to follow the electronic service protocols adopted for this proceeding. (See Attachment A to the December 7, 2000 Ruling on Additional Proposals and Comments, Procedural Matters, and Electronic Service Protocols.) In particular, parties are reminded to merge parts of documents (e.g., title page and text of pleadings). Further, the subject line of the transmittal note should identify the proceeding, party sending the document, and an abbreviated document title.

The burden is on parties to ensure that current and accurate electronic mail addresses are on the Commission's service list, just as parties must do for postal service addresses. This is accomplished by parties notifying the Commission's Process Office of corrections or changes. Parties should make reasonable efforts to ensure service is performed and completed, but need not undertake exceptional efforts to accomplish service if the electronic mail copy is returned undelivered. Nonetheless, parties should perform regular mail paper service of pleadings when the electronic mail is returned undelivered.

Finally, in addition to electronic mail service, four paper copies must also be served: one each on Jonathan Lakritz, ALJ Burton Mattson, ALJ Michael

<http://www.cpuc.ca.gov>; on the left side of the page click on "proceedings;" on the right side of the next page click on "service lists;" scroll down to "R0010002 Phase 2 list;" click on the "Phase 2 list;" click on "download the comma-delimited file;" copy the e-mail addresses in Column D; and paste the e-mail addresses into an electronic note.

Galvin, and Ed Quan in Energy Division. Each paper copy shall, to the extent feasible and reasonable, be served so that it is delivered to the Commission on the day it is served.

Some parties proposed at the September 7, 2001 PHC that the date of filing be one day after the date of service. This appears to reasonably reduce the filing burden on parties not located in San Francisco, Los Angeles or San Diego. No opposition was stated. The proposal is adopted. As a result, the date a document must be filed shall be one day after the date that it must be served.

IT IS RULED that:

1. The Phase 2 issues are as set forth in Attachment A. Respondent utilities shall file and serve reports on hospitals less than 100 beds and skilled nursing facilities. Respondent utilities shall file and serve proposals to implement priorities for customers experiencing extreme temperatures (Senate Bill 68, Pub. Util. Code Section 2772), including the presentation of expert medical opinion, a review of appropriate literature and research, and anything else necessary to reasonably implement this legislation. Further, respondent utilities shall file and serve proposals and comments on all issues. Other parties may file and serve proposals and comments on any or all issues.

2. Formal hearing is not expected in Phase 2, but shall be held if a motion for hearing is made and granted. Motions and responses to motions for formal hearing shall contain all the information stated in the body of this ruling. The Phase 2 record shall be composed of all filed and served documents in Phase 2.

3. The schedule is as set forth in Attachment B. Energy Division shall file and serve an agenda a reasonable number of days before each workshop. Parties shall use their best efforts to agree on a common outline for proposals, comments, revised proposals, reply comments, opening briefs and reply briefs,

and shall bring disputes to the attention of the Administrative Law Judge (ALJ) with sufficient time to allow a reasonable opportunity for resolution.

4. Any party who does not agree to the reduced time for review of the Phase 2 proposed decision (as shown in Attachment B) shall file and serve a motion for reconsideration of the schedule within seven days from today. Responses to such motion shall be filed and served within seven days from the date the motion is filed.

5. A respondent or party may request final oral argument and, in making that request, shall follow the procedure provided in the body of this ruling.

6. Service of documents shall be by electronic mail, and shall be accomplished by 5:00 p.m. on the date service is to be performed. The filing of documents shall be no later than one day after the date of service. In addition to electronic service, a paper copy shall also be served on Jonathan Lakritz, ALJ Mattson, ALJ Galvin, and Ed Quan of the Energy Division.

7. All other matters as discussed in the body of this ruling are adopted.

Dated September 21, 2001, at San Francisco, California.

/s/ CARL WOOD
Carl Wood
Presiding Officer
Assigned Commissioner

ATTACHMENT A
PHASE 2 ISSUES

1. Existing Interruptible Programs: Necessary or reasonable modifications to, or consolidations of, existing programs, including but not limited to:

- 1.1. Should any program scheduled to terminate before December 31, 2002 (e.g., San Diego Gas and Electric Company's rolling blackout reduction program) be extended from its scheduled termination date to December 31, 2002;
- 1.2. Should programs scheduled to terminate on December 31, 2002 be extended, and, if so, should megawatt and total program dollar limits adopted in D.01-04-006 be modified;
- 1.3. Should the bill limiter provision currently reflected in the interruptible program tariffs of Southern California Edison Company terminate on March 31, 2002;
- 1.4. Is it necessary or feasible to develop a tariff option for aggregation of more than two circuits with a single lead customer for the purpose of participation in the OBMC program (D.01-06-087, Ordering Paragraph 3);
- 1.5. Should the 10-day baseline for purposes of participation in the OBMC program recognize alternate work weeks, as proposed by Cal Steel (D.01-06-087, page 14); and
- 1.6. Should other modifications and consolidations be adopted.

2. Existing Curtailment Priorities: Necessary or reasonable modifications to existing curtailment priorities:

2.1. Hospitals less than 100 beds

- 2.1.1. Respondent utilities shall each report on the effect of including hospitals less than 100 beds on the list of essential customers, including the effect on the number of circuits and megawatts that are available for rotating outage (D.01-04-006, Ordering Paragraph 12, as renumbered by D.01-04-009);

2.1.2. Parties may make recommendations based on this information.

2.2. Skilled Nursing Facilities

2.2.1. Respondent utilities shall each report on the effect of including skilled nursing facilities on the list of essential customers normally excluded from rotating outages. (D.01-04-006, Ordering Paragraph 13, as renumbered by D.01-04-009.) Each report must state:

2.2.1.1. the number of affected circuits,

2.2.1.2. estimated megawatts removed from rotating outage,

2.2.1.3. estimated effect on mandatory curtailments,

2.2.1.4. estimate of the effect on the remaining 40% of total system load available for rotating outage,

2.2.1.5. an assessment of the reasonableness of reconfiguring circuits to narrow exempted load by isolating skilled nursing facilities, and

2.2.1.6. any other information necessary for the Commission to make an informed decision.

2.2.2. Parties may make recommendations based on this information.

2.3. Category M

2.3.1. What procedures, if any, should be adopted to consider continuing the essential customer status of those customers granted Category M status in D.01-09-020 past September 6, 2003;

2.3.2. What procedures, if any, should be adopted to consider additions to, or subtractions from, the list of Category M customers adopted in D.01-09-020 for the period after September 6, 2003.

2.4. Water and Sewer Utilities: What additional measures, if any, should the Commission adopt for normally exempting water and sewer utilities from rotating outages based on public health and safety.

2.4.1. By September 24, 2001, Water Division shall file, and provide limited service of, a report. (D.01-09-020, Ordering Paragraph 12.) The report shall:

2.4.1.1. Explain the basic types of systems used by water and sewer entities;

2.4.1.2. State the impact of any loss of power;

2.4.1.3. Indicate the effects on public health and safety;

2.4.1.4. State mitigation measures available for the systems; and

2.4.1.5. State any other necessary information.

2.4.2. Comments and recommendations may be filed within ten days of the date the Water Division Report is filed and served.

3. Extreme Temperature: Implementation of Senate Bill 68 (residential use priority in areas of extreme temperature). Respondent utilities shall, and other parties may:

3.1. Present expert opinion of medical experts, and a review of appropriate literature and research,

3.2. Address whether providing priority to customers experiencing extreme temperatures would result in increased outage frequency and duration for remaining customers, and the effect on the health and safety of those remaining customers,

3.3. Recommend implementation approaches, including limiting priority to only when temperatures are extreme, and

3.4. Address alternative measures, including, but not limited to, reducing the duration of the outage or imposing the outage earlier or later in the day.

4. Memorandum Account Balances: What should be the disposition of balances in memorandum accounts created by D.01-01-056 (for penalties paid and due under interruptible tariffs between October 1, 2000 and January 25, 2001).

- 4.1. What is the estimated memorandum account balance for each respondent utility.
- 4.2. Should uncollected penalties tracked in memorandum accounts be collected, or should penalties be waived.

(End of Attachment A.)

ATTACHMENT B**Page 1 of 3****PHASE 2 SCHEDULE WITHOUT FORMAL HEARING
R.00-10-002**

DATE	EVENT
September 7, 2001	Phase 2 Prehearing Conference
September 21, 2001	Phase 2 Scoping Memo and Ruling
September 24, 2001	Water Division Report filed and served
By October 4, 2001	Comments and recommendations on Water Division Report filed and served
October 12, 2001	Utilities file and serve reports on hospitals less than 100 beds and skilled nursing facilities; Utilities file and serve proposals and expert medical opinion on implementation of Senate Bill 68; Parties file and serve proposals addressing Phase 2 issues (see note below regarding dates for filing)
October 29 to November 2, 2001	Workshops conducted by Energy Division
November 9, 2001	Comments on proposals filed and served, Revised proposals filed and served, and Petition for modification filed and served
November 16, 2001	Reply comments filed and served, and Responses to petition for modification filed and served
November 21, 2001	Motions for evidentiary hearing (EH) filed and served
November 28, 2001	Responses to motions for EH filed and served
November 30, 2001	Ruling on motion for EH
November 30, 2001	Projected Submission Date
January 4, 2002	Proposed or draft decision (PD or DD) filed and served
January 10, 2002	Motions for Final Oral Argument (FOA) filed and served
January 14, 2002	Responses to motions for FOA filed and served
January 15, 2002	Comments on PD or DD filed and served
January 22, 2002	Reply comments on PD or DD filed and served
About January 22, 2002	FOA
About January 24, 2002	Commission Decision

Note: Filing may be up to, but shall be no later than, one business day after the date for service.

ATTACHMENT B**Page 2 of 3****PHASE 2 SCHEDULE WITH FORMAL HEARING
R.00-10-002**

DATE	EVENT
September 7, 2001	Phase 2 Prehearing Conference
September 21, 2001	Phase 2 Scoping Memo and Ruling
September 24, 2001	Water Division Report filed and served
By October 4, 2001	Comments and recommendations on Water Division Report filed and served
October 12, 2001	Utilities file and serve reports on hospitals less than 100 beds and skilled nursing facilities; Utilities file and serve proposals and expert medical opinion on implementation of Senate Bill 68; Parties file and serve proposals addressing Phase 2 issues (see note below regarding dates for filing)
October 29 to November 2, 2001	Workshops conducted by Energy Division
November 9, 2001	Comments on proposals filed and served, Revised proposals filed and served, and Petition for modification filed and served
November 16, 2001	Reply comments filed and served, and Responses to petition for modification filed and served
November 21, 2001	Motions for evidentiary hearing (EH) filed and served
November 28, 2001	Responses to motions for EH filed and served
November 30, 2001	Ruling on motion for EH
December 5 – 7, 2001	EH
December 21, 2001	Opening Briefs filed and served
January 4, 2002	Reply Briefs filed and served
January 4, 2002	Projected submission date
February 1, 2002	Proposed or draft decision (PD or DD) filed and served
February 8, 2002	Motions for Final Oral Argument (FOA) filed and served
February 15, 2002	Responses to motions for FOA filed and served
February 15, 2002	Comments on PD or DD filed and served
February 20, 2002	Reply comments on PD or DD filed and served
About February 25, 2002	FOA
About February 28, 2002	Commission Decision

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ATTACHMENT B

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PHASE 2 SCHEDULE WITH FORMAL HEARING

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Note: Filing may be up to, but shall be no later than, one business day after the date for service.

(End of Attachment B)

CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of the original attached Phase 2 Scoping Memo and Ruling of Presiding Officer and Assigned Commissioner on all parties of record in this proceeding or their attorneys of record on the Phase 2 service list.

Dated September 21, 2001, at San Francisco, California.

/s/ JACQUELINE GORZUCH

Jacqueline Gorzoch

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.